

APPEAL NO. 030576
FILED APRIL 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 28, 2003. The hearing officer resolved the disputed issue by determining that the claimant is not entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters. The claimant appeals this decision. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)), provides that "an injured employee who . . . is able to return to work in any capacity shall look for employment . . . every week of the qualifying period and document his or her job search efforts." The hearing officer determined that the claimant did not satisfy the requirements of Rule 130.102(e), because he did not document a job search effort during each week of either the fourth or fifth quarter qualifying periods. The hearing officer noted that the job search omissions occurred whether the qualifying period was calculated as stated in the Application for [SIBs] (TWCC-52), or as stipulated to by the parties. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). With regard to the claimant's argument that "Rule 130.102(d)(5)(e) [presumably Rule 130.102(d)(5)]" is

“invalid and in excess of the [Texas Workers' Compensation Commission's (Commission)]-rule making authority because it imposes burdens and restrictions inconsistent with or contrary to the controlling statute,” Section 408.142(a)(4), we note that we are without the authority to review a challenge to the Commission's rule-making authority.

The claimant also argues that the carrier waived its right to dispute SIBs entitlement by failing to file sufficient notice of dispute. Rule 130.104(e) provides that upon making SIBs determinations subsequent to the first quarter, the carrier shall issue a notice of determination to the injured employee and that the notice shall be mailed and contain all of the information required in the Notice of Entitlement or Non-entitlement portion of the TWCC-52. However, as noted in Texas Workers' Compensation Commission Appeal No. 021729, decided August 19, 2002, unlike Section 409.021 of the 1989 Act, Rule 130.104(e) is silent on the matter of waiver by noncompliance and that the Commission, in its response to a comment on the proposed Rule 130.104(e), directly discussed the matter of adding a waiver provision and stated that it was not necessary. See 24 Texas Register 409, January 22, 1999. Accordingly, we cannot agree that the carrier waived its right to dispute SIBs entitlement.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **HIGHLANDS UNDERWRITERS INSURANCE** and the name and address of its registered agent for service of process is

**CHARLIE MILLER
10370 RICHMOND AVENUE
HOUSTON, TEXAS 77042.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge